



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME Local 365, Nashua Custodial Employees

Complainant

v.

Nashua School District

Respondent

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Case No: A-0424-40

Decision No. 2005-102

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

AFSCME Local 365, Nashua Custodial Employees (hereinafter "the Union") filed an unfair labor practice complaint on May 18, 2005 alleging that the Nashua School District (hereinafter "the District") committed unfair labor practices in violation of RSA 273-A:5 I, as well as RSA 273-A:4, when it gave notice of its intent to implement a change in the custodial shift hours effective May 3, 2005. The Union states that in various circumstances in the past, and specifically during a grievance in 1994, subsequent bargaining sessions relative to the new North High School, and another grievance in 2002, it has been consistent in its position that when the terms and conditions of a position are changed through bargaining, the position must be reposted, whether vacant or not. During joint labor/management meetings that occurred on May 17, 2004, the Union alleges that when the District stated that a change in the schedule was long over due, the Union once again expressed its position that any change in the schedule must be bargained. The Union maintains that the District took no immediate action on the matter at that time.

As set forth in the Union's complaint, the District sent a notice to the Union on February 23, 2005 expressing its intent to unilaterally change the custodial shift hours effective May 3, 2005. Discussions relative to the notice occurred on March 14, 2005 and April 22, 2005. On April 22, 2005, the Union gave notice to the District of its intent to file an unfair labor practice with the PELRB and requested the District to suspend its implementation of the change in schedule pending the Board's decision on the charges, to which the District agreed. The Union alleges that the District has knowingly and willfully violated RSA 273-A:5 I (a), (b), (c), (e), (g), (h) and (i) by bargaining in bad faith, and, in particular, by giving notice of its intent to implement a unilateral change in working conditions contrary to the past practice which is mutually recognized and agreed to by the parties, and has been enforced through the grievance procedure. Moreover, the Union claims that the

Districts actions in this regard constitute a further violation of RSA 273-A:5 I (a), (c), (e), (g), (h) and (i), and RSA 273-A:4, by rendering the parties grievance procedure unworkable. As remedies, the Union requests that the PELRB (1) determine that the District has committed an improper labor practice by failing to bargain in good faith; (2) order the District bargain in good faith; (3) order the District to publicly post the findings of the Board for thirty (30) business days; (4) order the District to reimburse the Union for any and all costs and expenses incurred; and (5) grant such other relief as its deems just and equitable.

The District filed its answer denying the Union's charge on June 2, 2005. While the District generally admits to the factual chronology as described in the Union's complaint, it denies that it has committed any improper labor practice. By way of further answer, it states that the parties collective bargaining agreement ("CBA") and amendments thereto did not set or establish work hours (schedules) for Union members. To the contrary, the District avers that the CBA specifies that the District has the right to establish "a normal work schedule to suit the requirements of specific jobs," and "the right to determine the hours and schedules of work." The District asserts, *inter alia*, that work hours (schedules) for bargaining unit members have been changed on numerous occasions by the District to suit the requirements and needs of the specific positions without bargaining with the Union. Accordingly, the City requests that the PELRB (1) Find that the District has not committed an Unfair Labor Practice; (2) order the Union to make the District whole for any and all cost incurred as a result of its defense of the instant matter, and (3) grant such other relief as the Board may deem fair and just.

A pre-hearing conference was conducted before the undersigned hearing officer, on July 27, 2005 at PELRB offices, Concord, New Hampshire.

PARTICIPATING REPRESENTATIVES

For the Union: Daniel Cocuzzo, Esquire

For the District: Stephen M. Bennett, Esq.

ISSUES PRESENTED FOR BOARD REVIEW

- (1) Has the District committed unfair labor practices in violation of RSA 273-A:5 I, (a), (b), (c), (e), (g), (h) and (i), by giving notice of its intent to implement a change in the custodial shift hours effective May 3, 2005.
- (2) Has the District otherwise rendered the parties' grievance procedure unworkable in violation of RSA 273-A:4 by its actions relative to a change in the custodial shift hours?

WITNESSES

For the Union:

1. Steven Lyons, AFSCME Staff Representative
2. Robert Trudel, Former Chief Steward
3. Kenneth Cullen, Union Steward
4. Dan Dunbury, Union Steward

For the District:

1. Mark Conrad, Business Admin
2. Shawn Smith, Director of Plant Operations
3. Jennette Kotopoulis, Supervisor, Custodial Staff
4. Gary Connors, Asst. Director of Plant Operations
5. Lorne Swindell, Energy Mgr.
6. Matt Bennett, Custodial Supervisor - Elementary Schools
7. Julie Valcourt, Head Custodian @ Middle School
8. William Stoney, Sr., Director of Maintenance in 1994

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

Joint Exhibits:

1. Unit Certification, Case No. A-0424, Amended June 12, 2003
2. Parties' Collective Bargaining Agreement, 2003 - 2006
3. Official Grievance Form, dated 10/06/94
4. (a) Step 1 Grievance response, dated 3/08/02
(b) Notice of Vacancy, dated March 7, 2002
(c) Notice of Vacancy, dated March 29, 2002
5. Memorandum re: Change in Custodial Shift Hours, dated February 23, 2005
6. E-mail from Mark Conrad, dated 4/22/05
7. Memorandum from Mark Conrad, dated July 24, 2002
8. E-mail from Mark Conrad, dated August 28, 2002
9. Custodian shift schedule, dated May 9, 2002
10. High School Asst. Custodian Position Description, dated May 22, 2002
11. (a) 2000-2001, Nashua Public School Times
(b) 2002-2003, Nashua Public School Times
(c) 2004-2005, Nashua Public School Times

For the Union:

None other than those marked as joint.

For the District:

1. Documents related to October 6, 1994 grievance.
2. 2(a) thru 2(q) -- Notices of Job Vacancy
3. Letter from Jeanette Kotopoulis to Julie Valcourt, dated January 3, 1997.

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

LENGTH OF HEARING

The time set aside for this hearing will be one-half (½) day.

DECISION

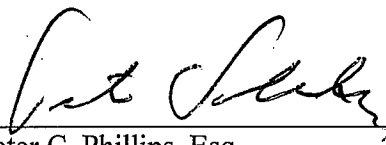
1. The parties' representatives shall meet, or otherwise confer, on or before **August 8, 2005** in order to compose a mutual statement of agreed facts. The parties' representatives shall memorialize those facts upon which they can so stipulate and file that document with the PELRB by the close of business on that date.
2. A telephone conference call with the parties' representatives will be conducted by the undersigned hearing officer on **August 9, 2005 at 2:00 PM** for the purpose of determining what progress, if any, the parties have made toward their own resolution of this matter.
3. The party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative or counsel, and to the PELRB, at least five (5) days prior to the scheduled hearing date. The party representatives shall meet, or otherwise arrange, to pre-mark any exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.
5. Unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing between the parties will be held on:

August 11, 2005 @ 9:30 AM

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.

Signed this 28th day of July, 2005.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:

Daniel Cocuzzo, Esq.

Stephen M. Bennett, Esq.